

DOCKET NO. 97-469-T - ORDER NO. 98-571

IN RE: Application of Sani-Mobile Environment,
L.L.C., 1120 Brumby Street, Charleston, SC
29405, for a Class E Certificate of Public
Convenience and Necessity.

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Sani-Mobile Environment, L.L.C. (“Sani-Mobile” or “Applicant”) for a Class E Certificate of Public Convenience and Necessity authorizing Sani-Mobile to transport property as follows:

BETWEEN POINTS AND PLACES IN SOUTH CAROLINA.

Subsequent to the filing of the Application, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties of the manner and time in which to file pleadings for inclusion in the proceedings. The Notice of Filing

was duly published in accordance with the instructions of the Executive Director, and the Applicant filed with the Commission affidavits of publication attesting that the Notice of Filing had been published. A Petition to Intervene was filed by Laidlaw Environmental Services (TG), Inc. ("Laidlaw").

A public hearing concerning Sani-Mobile's Application was convened on May 21, 1998, at 10:30 a.m. in the hearing room at the offices of the Commission located at 111 Doctors Circle, Columbia, South Carolina. The Honorable Guy Butler, Chairman, presided. Sani-Mobile was represented by Russell B. Shetterly, Esquire and John Hodge, Esquire. Laidlaw was represented by Val H. Stieglitz, Esquire and John W. Davidson, Esquire. The Commission Staff was represented by Florence P. Belser, Staff Counsel.

Carl Goodsell and Jeff Beukema testified on behalf of Sani-Mobile. Laidlaw presented the testimony of Dr. Oliver Wood, James Griffin, Jerry Locklear, and Jerry Davis.

APPLICABLE LAW

1. S.C. Code Ann. Section 58-23-590(C) provides in relevant part as follows:

The [C]ommission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the [C]ommission that:

- (1) it is fit, willing, and able to properly perform the proposed services and comply with the provisions of this chapter and the [C]ommission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

2. 26 S.C. Code Regs. 103-133 (Supp. 1997) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T, SCDHPT, and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able", the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

EVIDENCE OF RECORD

1. Carl Goodsell, Manager of Sani-Mobile in Charleston, South Carolina, testified that Sani-Mobile is in the business of proving industrial clean-up and is interested in providing disposal of hazardous material. Mr. Goodsell stated that Sani-Mobile's parent company is headquartered in Quebec City and that the parent company is a public company that is divided into six subsidiary companies. Mr. Goodsell stated that

Sani-Mobile's parent company is licensed in over twenty-two states, including North Carolina and Georgia, and serves over one thousand customers across the United States and Canada.

Mr. Goodsell stated that Sani-Mobile's parent company has a satisfactory safety rating. Sani-Mobile has been operating in South Carolina for almost one year and has approximately 30 clients to which Sani-Mobile provides services that are considered non-hazardous. Mr. Goodsell stated that Sani-Mobile seeks authority to provide hazardous wastes disposal so that it will be better able to serve its customers by providing full service to its customers. Mr. Goodsell stated that Sani-Mobile is seeking to serve some small contracts which customers have requested them to serve. Sani-Mobile leases its trucks from its parent company and has a vehicle maintenance program in place. The witness further stated that Sani-Mobile has never been cited for environmental violations, either nationwide or within South Carolina. Mr. Goodsell stated that Sani-Mobile's operations are located at the old naval base in North Charleston.

Jeff Beukema of Sales and Marketing for Sani-Mobile also testified in support of the Application. Mr. Beukema testified that through his position in Sales and Marketing he is aware of opportunities from Sani-Mobile's current customers to provide services involving moving hazardous wastes. According to Mr. Beukema, most of Sani-Mobile's current customers are located in the Charleston area. Mr. Beukema stated that Sani-Mobile can serve the hazardous wastes needs of their customers by disposing of the wastes out of state. However, he also testified that if Sani-Mobile had intrastate authority

then Sani-Mobile could provide the services more economically by moving the wastes to an in-state disposal site.

Dr. Oliver G. Wood, Jr. was called as a witness by Laidlaw. Dr. Wood stated that he has experience evaluating capital structures of companies. Dr. Wood also stated that he reviewed the balance sheet submitted with Sani-Mobile's Application. Based on his review of the balance sheet submitted with the Application, Dr. Wood stated his opinion that Sani-Mobile does not have the financial wherewithal to withstand losses from large uninsured claims. Further, Dr. Wood offered that Sani-Mobile has an inadequate net worth which led him to express concern over whether Sani-Mobile is financially able to operate as a viable company.

James Griffin, Facility Manager for Laidlaw, also testified. Mr. Griffin stated that he has worked for Laidlaw for twenty-two years in South Carolina and that he is familiar with the market for hazardous wastes disposal in South Carolina. Mr. Griffin testified that the market in South Carolina for hazardous wastes hauling is shrinking. By way of example, Mr. Griffin stated that Laidlaw has decreased its fleet from 45 power units to 36 power units. Further, Mr. Griffin stated that revenues have declined over the last 3 to 4 years. Further, Mr. Griffin stated that the number of carriers have increased but the amount of wastes has decreased. Mr. Griffin further stated that the market sought to be served by Sani-Mobile is being served by the current carriers and further that the geographical market is being served by the existing carriers.

Jerry Locklear of Sales and Operations with Robbie D. Woods, Inc. testified. Mr. Locklear stated that the market sought to be served by Sani-Mobile is currently being

adequately served. Mr. Locklear stated that there is no difficulty in finding a company to transport waste in South Carolina. Mr. Locklear also offered that the market is not growing, due in large part to federal standards of waste minimalization. He further stated that waste minimalization has caused generators of large streams of waste to become fewer and that some former large generators of waste are now generating smaller amounts of waste. Mr. Locklear offered that the market is currently being served by the existing companies in South Carolina.

Also testifying was Jerry Davis. Mr. Davis is employed by Laidlaw in the Corporate Compliance Group. Mr. Davis testified that the Environmental Protection Agency ("EPA") has imposed waste minimalization requirements on waste generators which means that generators are forced to find means to reduce the amount of waste that is generated. In addition, Mr. Davis stated that many companies, particularly Fortune 500 companies, are adding additional standards in order to make their companies more environmentally conscious. Mr. Davis further stated that the waste minimalization programs are causing less waste to be generated which requires fewer transporters.

FINDINGS OF FACT

After full consideration of the application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. Sani-Mobile Environment, L.L.C. is a limited liability company organized under the laws of the State of South Carolina. Sani-Mobile Environment, L.L.C. is a subsidiary of Groupe Sani Mobile Inc. which is located in Quebec, Canada.

2. Sani-Mobile operates in South Carolina providing environmental clean-up and transporting non-hazardous wastes for disposal. Sani-Mobile seeks intrastate authority to transport hazardous wastes within the State of South Carolina.

3. The Commission finds that the Application of Sani-Mobile to provide intrastate transportation services of hazardous wastes should be denied, as Sani-Mobile has not demonstrated that its services are required by the present public convenience and necessity.

CONCLUSIONS OF LAW

1. Based on the record before the Commission and the applicable law, the Commission concludes that the Application of Sani-Mobile should be denied because Sani-Mobile has failed to present sufficient evidence to prove that the “proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity” as required by S.C. Code Ann. Section 58-23-590 (Supp. 1997).

Sani-Mobile presented testimony that it would like to be able to provide intrastate hazardous wastes transportation services to customers to whom it is currently providing non-hazardous transportation services. However, Sani-Mobile made no showing that those customers are not able to currently obtain hazardous wastes transportation services from the carriers which are already operating within South Carolina. A mere desire to provide services to customers does not equate to a showing that the public convenience and necessity require the proposed services.

In fact, the record reveals compelling testimony that the public convenience and necessity is currently being met by existing carriers. Witnesses for the intervenor Laidlaw testified that the market of hazardous wastes is shrinking. The witnesses explained that less hazardous wastes are being generated and explained that federal regulations, such as waste minimalization requirements, as well as some companies' efforts to become more environmentally conscious have accounted for a decline in the generation of hazardous wastes. Further, the Laidlaw's witnesses stated that the effect of the shrinking market has caused Laidlaw to decrease the size of its own fleet of equipment and has also resulted in a decline in revenues. Finally, witnesses for Laidlaw, some of whom have extensive experience in the hazardous wastes transportation industry in South Carolina, stated that finding transportation services for hazardous wastes in the state is not a problem and that companies are available to transport hazardous wastes.

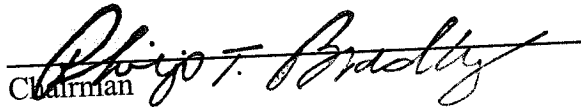
Therefore, the Commission concludes that Sani-Mobile has failed to meet the requirement of S.C. Code Ann. Section 58-23-590 (Supp. 1997) of proving that the proposed service is required by the present public convenience and necessity.

2. As the Commission has concluded that Sani-Mobile has failed to meet the requirement of proving that the public convenience and necessity requires its services, the Commission takes no position on whether Sani-Mobile has demonstrated that it is fit, willing, and able to properly perform the proposed services.

IT IS THEREFORE ORDERED THAT:

1. The Application of Sani-Mobile for a Class E Certificate of Public Convenience and Necessity to transport hazardous wastes between points and places within the State of South Carolina is denied.
2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Acting Executive Director

(SEAL)